IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 445 of 2007()

SC.14/2006 of II ADDL.SESSIONS COURT, ERNAKULAM
CRIME NO.205/2003 OF ANGAMALY POLICE STATION

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PETITIONER: ACCUSED:

PRADEEP, S/O.PANKAJAKSHAN,
AGED 24 YEARS, MANGALATH HOUSE,
KIDANGOOR KARA, ANGAMALY.

BY ADV. SRI.M.L.SURESH KUMAR
SRI.RANJIT BABU

RESPONDENTS:

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.445 of 2007

Dated this the 28th day of February 2007

O R D E R

The petitioner is an accused in a prosecution and he faces allegations for offences punishable interalia under Section 302 I.P.C. The petitioner was enlarged on bail. One of the witnesses had come before this court seeking police protection to protect himself against the apprehended violence from the petitioner herein. Another bench of this court, by order dated 20/06/2006, had allowed the petition and directed the police to offer protection to the witnesses. It was also observed that the police must "take appropriate action against the petitioner herein including taking of steps for cancellation of bail granted to him in case the complaint that he is threatening the petitioner, who is CW2 in Crime No.205/03 of Angamaly police station, is true." Thereupon, an application appears to have been filed before the learned Sessions Judge who was seized of S.C.No.14/2006 and on that application, the bail granted to the petitioner was cancelled by the impugned order which I extract below:

> "No objection filed. Heard the Public Prosecutor. The defence counsel seeks adjournment. It is alleged that the 1st accused in this case is threatening CW2, a prime witness in this case. Crime 944/06 has been registered u/s.120(B), 506 and 195A of the I.P.C by the Angamali Police.
>
> Threatening a witness is a very serious matter which requires to be viewed with seriousness. Hence the bail granted by this court to A1 vide order dated 18/09/06 in Crl.M.P.4575/06 is cancelled."

2. The learned counsel for the petitioner submits that the harsh remedy of law - cancellation of bail - has been resorted to by the learned Magistrate without proper application of mind. The mere fact that another crime has been registered is not a reason at all for the court to direct cancellation of bail. At least summary enquiry must have been conducted to satisfy the learned Sessions Judge that the allegations are correct and the process of reasoning by which the learned Sessions Judge came to the conclusion that the bail is liable to be cancelled on the ground of threatening of witnesses must have been revealed in the order. That having not been done, the impugned order may be set aside, prays the learned counsel for the petitioner. The learned Public Prosecutor opposes the application. A counter statement has been filed by the investigating officer to which

Annexures R1 to R5 are annexed and detailed reasons are given as to why the application for cancellation of bail should have been allowed by the learned Sessions Judge. The learned counsel for the petitioner submits that the petitioner may be granted an opportunity to raise his objections against the prayer for cancellation of bail and the learned Sessions Judge may be directed to consider all the relevant inputs and pass appropriate orders. The petitioner is, of course, in custody at the moment and the trial is scheduled to commence on 01/03/2007, it is submitted.

3. I am not satisfied that the impugned order reflects application of mind by the learned Sessions Judge appropriately - to all the relevant circumstances. I am, in these circumstances, satisfied that the impugned order is liable to be set aside and the learned Sessions Judge must consider the prayer for cancellation of bail, afresh. Both sides shall be at liberty to place all the relevant details and raise all their relevant contentions before the learned Sessions Judge. The learned Sessions Judge must thereafter pass appropriate orders, in accordance with law, after adverting to all relevant circumstances. Till then, the petitioner

shall continue in custody. The learned Sessions Judge, needless to say, must make every endeavour to dispose of the application for cancellation of bail afresh, at any rate, within a period of ten days from the date on which a copy of this order is placed before the learned Sessions Judge.

4. Copy of this order shall be issued to the learned counsel for the petitioner for immediate production before the learned Sessions Judge.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006